IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.1238 OF 2005

Kashinath Barku Dalvi..... .... Petitioner.
V/s
State of Maharashtra & Ors .... Respondents.

Mr.P.M. Pradhan, Adv. for the petitioner.

Mr.A.M. Shringarpure, APP for the State.

CORAM:V.G. PALSHIKAR
AND
R. C. CHAVAN, JJ.

20.7.2005.

PC:

1. By this petition the petitioner who claims to be brother of a victim allegedly dying in police custody prays for certain reliefs which read as under :

"(A) This Hon'ble Court be pleased to issue a writ of mandamus under Article 226 of Constitution of India directing Respondent State to take stringent punitive action against the erring officers of Manpada Police Station who are responsible for custodial death of deceased Suresh Barku Dalvi.

(B) This Hon'ble Court be pleased to issue a writ of mandamus under Article 226 of Constitution of India directing the State to conduct investigation of the offence of custodial death of deceased Suresh Barku Dalvi through an independent investigating machinery;

(C) This Hon'ble Court be pleased to issue a writ of mandamus under Article 226 of Constitution of India directing State to award compensation to the Petitioner No.2 and her two children which the deceased has left, for the

custodial death of her husband Suresh Barku Dalvi;

(D) This Hon'ble Court be pleased to issue a writ of mandamus under Article 226 of Constitution of India directing State to award compensation to the Petitioner No.1 for his illegal detention in the police custody;

(E) This Hon'ble Court be pleased to issue a writ of mandamus under Article 226 of Constitution of India that pending the hearing and final disposal of present Writ Petition, the State be directed to take immediate steps to put the erring officers including Respondent No.5 and 6 under suspension pending the criminal trial of the offence of custodial death;

(F) Ad-interim in terms of prayer clause (E) be granted;

(G) Cost be granted to the Petitioners;

(H) Pass such other and further orders as this Hon'ble Court may deem fit and property in the interest of justice. "

2. The basic prayer is the respondents-State should take stringent punitive action against erring officers of Mumbai Police who are responsible for custodial death of Suresh Barku Dalvi.

3. Notice why the petition should not be admitted was issued and affidavit in reply has been filed by the concerned officer of State CID. The affidavit is of one Shri S.D.More, Deputy Superintendent of Police, State CID, Flying Squad, Maharashtra State Pune. In this affidavit complete details are given as how said Suresh Barku Dalvi was accosted, how he was taken in police custody and how accordingly he committed suicide. It is necessary that we note verbatim averments of reply of the police in this case:

> "14. I say that during the course of investigation, it revealed that deceased Suresh B. Dalvi committed suicide by hanging himself in the toilet of Lock Up Room. I further say that looking to the injuries nos.3, 4, 5, 11, 18 and 19 in Col. No.17 of Post Mortem Notes are found on the body of deceased on account of assault at the hands of Senior Police

Inspector S.B. Shaikh and Police Sub Inspector S.D. Gaikwad while recovering the articles from deceased and hence, offence vide CR No.67/2005 U/Secs.330, 34 of IPC came to be registered at Manpada Police Station on 25.4.205 and both the police officers came to be arrested on 25.4.2005 at 11.20 hrs and were released on bail.

15. I say that the investigation in the aforesaid case is completed and charge sheet is filed before the Learned Judicial Magistrate, First Class, 3rd Court, Kalyan, Dist: Thane vide CC No.237/2005 on 23.6.2005.

16. I say that the present Petitioners have also filed an application before the State Human Right Commission on 18.12.2004 for the same reliefs as prayed in the present Petition and the same is being pending for final hearing and the present Petitioners also filing the aforesaid Writ Petition for the same cause of action before this Hon' ble Court which is not maintainable and on this ground the Petition filed by the Petitioners deserves to be dismissed."

4. Earlier it is found by the police that certain injuries eight approximately in number are caused by the torture inflicted by the police on the victim when he was alive in their custody. In pursuance to these findings on investigation charge sheet has been filed in the Court of Learned Judicial Magistrate, First Class, 3rd Court, Kalyan, Dist: Thane in Criminal Case No.237 of 2005 on 23.6.2005.

5. Thus, allegations of custodial excess harassment and torture are under trial before the Court of competent jurisdiction. It is possible that during the course of conduct of that trial evidence to show offences or possible commission of offence not triable by learned Magistrate comes on record in which case the power of the Magistrate to commit the matter to the Sessions is there. Even thereafter to alter the charge, due to the circumstances and evidence coming before the Court is there in Criminal Procedure Code.

6. Apart from that on 12.12.2004 application has also been made to the State Human Rights Commission in relation to the alleged custodial death as submitted in this

petition. The powers of the State Human Rights Commission of India are independent of the powers under the Criminal Procedure Code and inspite of any orders that may be made by Courts of law in India the Human Rights Commission can even thereafter order additional further or separate enquiry. Such being the position of rule of law in India we deem it excessive exercise of our jurisdiction under Article 226 to cater to fancies of the complainant that his ward is subjected to judicial death only and investigation must go on according to his dicta and not according to the procedure established by rule of law. Hence petition is dismissed. Authenticated copy of order be issued.